**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

**THE HON'BLE SRI JUSTICE B.PRAKASH RAO**
**AND**
**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN,J**

**W.P.NOs.11257 and 11258 OF 2006**
**DATED 13-12-2006**

BETWEEN

Shaik Basheer Ahmed

.. PETITIONER
(in both the writ petitions)

And

The Regional Director of Medical & Health Services,
Guntur and 5 others.

…RESPONDENTS
(in both the writ petitions)

**THE HON'BLE SRI JUSTICE B.PRAKASH RAO**
**AND**
**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN,J**

**WRIT PETITION NOS.11257 & 11258 OF 2006**

**COMMON ORDER:**(per Sri RR.J)

These two writ petitions are preferred by the petitioner herein, who is the Senior Assistant working in the office of the District Medical and Health Officer, Guntur, aggrieved by the orders passed by the Tribunal in O.A.Nos.2886 and 2548 of 2006 dated 24.5.2006.

Since a common question arises for consideration in both the writ petitions, they are heard together and are being disposed of by this

common order.

The Tribunal, while passing the impugned orders, took note of the fact that the petitioner-applicant had already completed 9 years of stay in Guntur and accordingly held that as he has been accommodated to a nearby place, he could not have any grouse. It was held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of the statutory provisions prohibiting such transfer, the Tribunal cannot interfere with the transfer orders and cannot substitute its own decision for that of the administrative authorities. The Tribunal noted that there were no statutory rules governing transfers and posting of the Government servants and that the Government had issued instructions in the nature of guidelines. It was further held that the petitioner-applicant had not made out any case calling for interference on the ground of mala fides and that allegations of mala fides, without any positive proof, would not necessitate the order of transfer being set aside on the ground that it was vitiated by mala fides. Accordingly, O.A.No.2548 of 2006, which was filed by the petitioner-applicant, aggrieved by his transfer orders dated 25.4.2006, was dismissed and the interim order earlier granted by the Tribunal was vacated. O.A.No.2886 of 2006 wherein the petitioner had also questioned the transfer and posting of one Sri K.Srinivasa Rao at Guntur vide proceedings 25.4.2006, was also dismissed by the Tribunal under the impugned orders.

Sri P.V.Krishnaiah, learned counsel for the petitioner, would draw the attention of this Court to the fact that the petitioner's wife died due to cardiac respiratory arrest just one month after giving birth to a female child and that due to the sudden demise of his wife, his family was disturbed and he had to look after the welfare of his children who were aged 2 ½ years and one month old for which his presence in

Guntur was essential. Learned counsel would also refer to the averments made in the affidavit filed in support of the writ petition wherein a reference is made to certain news items published in news papers stating that the 1st respondent had effected the transfer orders while sitting in a hotel and not in his office. Learned counsel would submit that the very fact that three contradictory orders were passed on the very same date i.e. on 25.4.2006 by the 1st respondent and the fact that Sri K.Srinivasa Rao who had hardly put in 2 years of service at his earlier station was transferred to Guntur and Sri S.V.Seshaiah against whom allegations of irregularities were made, was retained at his earlier place on his order of transfer being cancelled would itself establish the fact that the 1st respondent had effected the transfers for reasons which were not bona fide. While fairly conceding to the legal position that malice required a very high degree of proof, learned counsel would submit that in the present case, legal malice was clearly established inasmuch as the 1st respondent, who was arrayed as the 6th respondent eo nominee, had effected transfers in a whimsical and arbitrary manner, obviously for extraneous considerations. Learned counsel would invoke the sympathy of this Court to retain the petitioner at Guntur by pointing out the fact that he has to take care of his two children who are aged 2 ½ years and one month respectively.

S r i G.Vidyasagar, learned counsel appearing for the 5th respondent, would submit that while the petitioner had contended before the Tribunal that he had not put in the minimum required four years of stay prior to the passing of the impugned orders of transfer, he had conveniently omitted to state that, while he had put in less than four years of stay in the office of the District Medical and Health Officer, Guntur, he had none the less continued to stay at Guntur for the past

nine years having worked earlier in the Government General Hospital, Guntur. Learned counsel would also point out that, except for a short stint of two years, the petitioner has continuously worked at Guntur for the past 16 years. Learned counsel would submit that transfer is an incidence of service and that this Court would be slow in interfering with such transfer orders.

On a query from this Court as to whether the representation submitted by the petitioner seeking his retention at Guntur had been considered by the 3rd respondent – Director of Health, Government of Andhra Pradesh, learned Government Pleader would fairly state that the said representation is still pending consideration.

It is well settled that mala fides are more easily made than established and that the degree of proof required to establish mala fides is of a very high order ( See **E.P.Royappa v. State of Tamil Nadu**[1] and **Rajendra Roy v. Union of India**[2]**)**. Except for an allegation that there were news items to show that the 1st respondent who was arrayed eo nominee as the 6th respondent had passed orders at a hotel, no details are forthcoming as to when such orders were passed nor is the name of the hotel mentioned in the affidavit. In the circumstances, we see no reason to entertain such a plea of malice.

It is also well settled that transfer is an incidence of service and it is for the competent authority to decide, on the basis of administrative exigencies, as to where its employees are to be posted. It is not for this Court or the Tribunal to issue directions to the authorities in this regard. No exception can be taken to the order of the Administrative Tribunal. We however note that the petitioner's case does deserve sympathetic consideration and the representation submitted by him to

the 3rd respondent requires expeditious disposal as the fact that the petitioner's wife died leaving behind a one month old baby is not in dispute. It is also not disputed that the petitioner has another child aged just 2 ½ years.

In the circumstances, it would meet the ends of justice, if the writ petition is disposed of directing the 3rd respondent herein to examine the representation submitted by the petitioner and pass appropriate orders thereon, as expeditiously as possible, in any event, not later than three weeks from the date of receipt of a copy of this order. It is also open to the 3rd respondent to take a decision as to whether the petitioner should be retained at Guntur pending disposal of his representation.

Both the writ petitions are accordingly disposed of. However, in the circumstances, without costs.

**B.PRAKASH RAO,J**

**RAMESH RANGANATHAN,J**

Dated 13.12.2006
msv

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[1] AIR 1974 SC 555
[2] AIR 1993 SC 1236)